October 15, 1985

The Honourable Lincoln Alexander
Lieutenant Governor of Ontario
Queen's Park
TORONTO, Ontario
M7A 1A1

May it please Your Honour:

I have the honour to submit to the Lieutenant Governor in Council the Annual Report of the Ontario Provincial Courts Committee for the period April 1, 1984 to March 31, 1985.

Yours very truly,

Alan R. Marchment
Chairman
Ontario Provincial Courts
Committee

Encl.

c.c. The Honourable Elinor Caplan
The Honourable Ian Scott, Q.C.

ONTARIO PROVINCIAL COURTS COMMITTEE

Annual Report 1984-85

The Ontario Provincial Courts Committee is established pursuant to section 88 of the Courts of Justice Act, 1984. Its function is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges.

During the period April 1, 1984 to March 31, 1985, the Committee consisted of:

Chairman:	Alan R. Marchment, F.C.A. President and Chairman of the Board Guaranty Trust Company of Canada
Judges' Nominee:	Edward L. Greenspan, Q.C. Barrister and Solicitor
Government Nominee:	Robert D. Carman Secretary Policy and Priorities Board of Cabinet

Mr. Carman's position on the Committee has since been assumed by Arthur H. Clairman, Senior Vice-President and General Counsel, Olympia and York Developments.

On March 27, 1984, the Ontario Provincial Courts Committee submitted to the Lieutenant Governor in Council recommendations for a new pension plan for provincial judges. Shortly afterward, the government indicated its intention to implement the recommendations and organized several briefing sessions to explain the details of the plan to the judges. Several issues arose at the briefing sessions on which the Committee felt clarification of its earlier recommendations might be helpful. The Committee met in June 1984 with representatives of the judges, including Paul French, solicitor for the Provincial Judges Association (Criminal Division) and the Ontario Family Court Judges Association. On June 25, 1984, the Committee wrote to the Attorney General, the Honourable R. Roy McMurtry, to comment on several issues. A copy of that letter is attached.

One of the issues dealt with in the letter involved the payment of severance pay and attendance gratuities when a judge ceases to hold office. The Committee was subsequently advised by the Attorney General and by Mr. French that its recommendation on this issue did not mesh

with the requirements of the federal Income Tax Act and, accordingly, did not accomplish its objective. The Committee met in December 1984 with Mr. French and other representatives of the judges' associations to receive a further submission on this question. At that meeting, Mr. Carman advised that Revenue Canada had given an opinion indicating that serious tax consequences could be avoided by taking another approach to the issue. This approach appears to have provided a resolution of the immediate concerns.

At the December 1984 meeting, the Committee also received a submission from the judges' associations on the question of salaries. The Committee has submitted a recommendation on this issue together with this Annual Report.

Attach.

June 25, 1984

The Honourable R. Roy McMurtry, Q.C.
Attorney General of Ontario
18th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

Dear Mr. Attorney:

Since the submission of the Provincial Courts Committee's pension recommendations and their acceptance by the government, we understand that your Ministry has arranged briefing sessions to explain the details of the new plan to the judges. Several issues have been raised at these briefing sessions on which the Committee wishes to comment. We are writing directly to you since our comments are intended merely to clarify our earlier recommendations and in the hope that it will assist in expediting any amendments to the regulation that are considered desirable.

The first issue concerns judges who have purchased military service or other types of service for the purpose of obtaining additional credit under the Public Service Superannuation Act. For some existing judges, these voluntary contributions will provide greater benefits, since they are covered by the provision that guarantees them at least the benefit they would have received under the Public Service Superannuation Act. For most existing judges, however, the new retirement plan produces greater benefits than the Public Service Superannuation Act, with the result that some judges who made voluntary contributions will not receive any additional benefit from the voluntary contributions they made. We recommend that existing judges who have purchased military service or made other forms of voluntary contributions to the Public Service Superannuation Fund should be given the option of (a) transferring all of their PSSF contributions and credits to the new retirement plan or (b) receiving a refund of their voluntary contributions and transferring only their mandatory contributions and the corresponding credits to the new plan. This option should be exercised within the next year.

A second issue concerns the indexation of retirement payments to existing judges who, pursuant to the guarantee, receive a payment initially calculated in accordance with the Public Service Superannuation Act. It has been suggested that these judges should have the option of having these payments indexed in the same way as Ontario public service pensions, instead of

being indexed according to increases in judges' salaries. To do this, in our view, would divide the existing judges into two classes, those with salary indexation and those with public service indexation. We consider this to be undesirable. We believe all existing judges should have their retirement payments indexed to changes in judges' salaries, without an upper limit like the one that exists under the public service scheme.

The third issue concerns judges who retired from full-time service between October 1, 1979 and July 1, 1984 and are receiving Public Service Superannuation Act pensions. They have made contributions to the Superannuation Adjustment Fund, which provides for the indexing of pensions in the public service. For many of these judges, the new retirement plan will produce greater benefits. Since the new plan is indexed to increases in judges' salaries, it is possible that some of the contributions made to the Superannuation Adjustment Fund will never be used. We recommend that the unused portion of these contributions should be refunded to the judges who will receive benefits calculated in accordance with the new plan. With respect to the other judges who, pursuant to the guarantee, receive benefits calculated in accordance with the Public Service Superannuation Act, we recommend that they should have a choice of (a) receiving a refund of their unused Superannuation Adjustment Fund contributions and having their retirement benefits indexed to increases in judges' salaries or (b) receiving no refund and having their retirement benefits indexed in the same manner as pensions under the Public Service Superannuation Act. This option should be exercised within the next year.

The fourth issue concerns the payment of severance pay and attendance gratuities when a judge ceases to hold office. At present, if these payments are made before a judge reaches 71 years of age, it is possible to "roll" the payment into a Registered Retirement Savings Plan and postpone the tax consequences. If a judge ceases to hold office after attaining age 71, however, no tax shelters are available, with the result that there are serious tax liabilities. To avoid this problem, we recommend that the payments should be made when the judge ceases to hold office or at age 70, whichever occurs first.

We recommended that the same benefits as are currently available should continue to apply to both full and reduced service judges (with the exception of LTIP and life insurance). We understand that some question has arisen concerning the detailed calculation of vacation and sick leave credits for reduced service judges. In our view, this is an administrative matter that does not need to be dealt with by regulation. The chief judges are responsible for the assignment of judicial

duties to reduced service judges and, in our view, this resposibility includes the responsibility for administering the vacation and sick leave aspects of the reduced service system.

On a related issue, there is apparently some confusion about whether a chief judge should be obligated to provide a reduced service judge with the opportunity of working more than 50 per cent of the time, even if this would present scheduling problems in a particular area of the province. As indicated above, the assignment of judicial duties is the responsibility of the chief judges and, in our view, it is their responsibility to determine the appropriate level of service from a reduced service judge.

We hope these comments are of assistance in clarifying our earlier recommendations.

Yours very truly,

Alan R. Marchment, F.C.A.
Chairman

Edward L. Greenspan, Q.C.
Member

Robert D. Carman
Member

cc. Paul French
His Honour Judge Gordon Chown